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whole policy. *Bills v. Hibernia Ins. Co.*, 87 Tex. 547; *Georgia Home Ins. Co. v. Brady*, (Tex. Civ. App.), 41 S. W. 513; and *Sullivan v. Mercantile Town Mut. Ins. Co.*, 20 Okl. 460, are cases sustaining such a policy. To the contrary are *Josnson v. Sun Fire Ins. Co.*, 3 Ga. App. 430; and *Aetna Insurance Co. v. Mount*, 90 Miss. 642. The principal case goes a step farther than the "*Bills Case*" cited above where the subject of the insurance consisted of separate classes of property separately valued, but it is the logical outcome of the doctrine there enunciated. Directly to the contrary, however, is *Vucci v. North British & Mercantile Ins. Co.*, 88 N. Y. Supp. 986. The court in the principal case may have been influenced by the fact that the value of the unincumbered portion of the goods insured exceeded the amount of the insurance on all the goods, for carrying this doctrine to its logical conclusion, it would seem that the insured might incumber the property to any extent provided that a moiety only should be free. The decision is strengthened by the now well established rule that the insurance contract will be so construed as to prevent a forfeiture if possible. I COOLEY'S BRIEFS ON THE LAW OF INSURANCE, p. 633; *Baley v. Homestead Fire Ins. Co.*, 80 N. Y. 21.

LIBEL—ACTIONABLE PUBLICATION—ADVERTISEMENT CONTAINING PORTRAIT AND FALSE ENDORSEMENT OF WHISKEY.—In an advertisement printed in defendant's newspaper, plaintiff's portrait was published with a statement thereunder purporting to have been made by one "Mrs. A. Schuman" endorsing a brand of whiskey, and calculated to convey the impression that plaintiff is a nurse, and had personally used this whiskey, and as a nurse had recommended its use as a tonic. In an action for libel the declaration alleged that plaintiff was not Mrs. Schuman, nor a nurse, that she was an abstainer from liquor and had neither used, nor recommended the use of, this whiskey. At the trial testimony in support of these allegations was excluded, and a verdict was directed for defendant. *Held* that plaintiff should have been permitted to prove her case and submit it to the jury. *Peck, Petitioner v. Tribune Company*, (1909), 214 U. S. 185.

The Circuit Court of Appeals, Seventh Circuit had affirmed the judgment of the trial court (*Peck v. Tribune Co.*, 154 Fed. 330), GROSSCUP, J., who delivered the opinion of the court, giving the following reasons: Since there was no averment of special damage the plaintiff must recover on the libel as such *per se*, if at all; that in his opinion the alleged matter is not libelous *per se*, as bringing the plaintiff into ill repute, public hatred, contempt or ridicule, inasmuch as there is no consensus of opinion that nursing as an occupation is discreditable nor is the use of a particular and favorite brand of whiskey as a tonic and recommending its use by others generally considered wrong. Mr. JUSTICE HOLMES says: "If a man sees fit to publish manifestly hurtful statements concerning an individual, without other justification than exists for an advertisement or piece of news, the usual principles of tort will make him liable, if the statements are false or are true only of someone else"; that an unprivileged falsehood need not entail universal hatred to constitute a cause of action, it being sufficient if the statement

injures the party alluded to in the estimation of an important and respectable part of the community. By the reasoning of the Supreme Court it appears that public hatred, ridicule, contempt, *et cetera* are not matters of consensus of opinion nor of majority vote. If the alleged matter produce such a change of opinion toward the petitioner in the minds of an appreciable fraction of society it will constitute a libel. *COOLEY*, TORTS, 401, 449; *Martin v. The Picayune*, 115 La. 979; *Culmer v. Canby*, 101 Fed. 195. That many would not look down on petitioner for being a nurse or for using whiskey and recommending its use, is obvious but it must appear equally so that she could fall in the estimation of many by reason of such supposition and more especially when taken in consideration with the supposition that she had allowed herself to be used for such advertising purposes. It was petitioner's right to have the case submitted to the jury on its merits. *Twombly v. Monroe*, 136 Mass. 464, 469; *Gates v. New Recorder Co.*, 155 N. Y. 228. See also *Morasse v. Brochu*, 151 Mass. 567, 575, and *Farley v. Evening Chronicle Publishing Co.*, 113 Mo. App. 216, 87 S. W. 565.

MASTER AND SERVANT—INJURY TO SERVANT—PROXIMATE CAUSE—VICIOUS ANIMALS—ASSUMPTION OF RISK.—Plaintiff was employed as driver in defendant's coal mine and on his first trip he was given a mule generally reputed to be vicious. A former driver had notified defendant of this fact but plaintiff was ignorant of it. While hauling in the mine the mule started to kick and in attempting to avoid injury plaintiff fell over a pile of refuse, and falling under the car, was run over and badly crushed. *Held*, the kicking of the mule was the proximate cause of the injury and the negligent allowing the pile of "gob" to accumulate was a contributing cause. There was no assumption of risk. *Miller v. Kelly Coal Co.*, (1909), — Ill. —, 88 N. E. 196.

Proximate cause is defined to be "that act or omission which immediately causes and without which the injury could not have happened, notwithstanding conditions or omissions concurred therewith." *Pullman Palace Car Co. v. Laack*, 143 Ill. 242, 32 N. E. 285; *Springfield Consolidated Ry. Co. v. Puntenney*, 200 Ill. 9, 65 N. E. 442; *Missouri Malleable Iron Co. v. Dillon*, 206 Ill. 145, 69 N. E. 12. If it appear that any domestic animal is vicious and the owner has been notified of that fact, he is responsible for injury done by it. *Bogodonow v. New York Lumber & Storage Co.*, 91 N. Y. Supp. 331. The gist of the action is not the negligent keeping of a vicious animal but the keeping him with notice of his vicious propensity. *Twigg v. Ryland*, 62 Md. 380; *Muller v. McKesson*, 73 N. Y. 195. The law will imply notice of any defect, which, by use of ordinary care might have been known to the master. *Missouri Malleable Iron Co. v. Dillon*, *supra*, *Metcalf v. Nystedt*, 203 Ill. 333. The sufficiency of the notice is a question of what is sufficient to put a reasonable man on his guard. It is not necessary that it be notice of mischief actually committed, it is notice of the propensity. *Reynolds v. Hussey*, 64 N. H. 64, 5 Atl. 458; *Flansburg v. Basin*, 3 Ill. App. 531. Assumption of risk depends on an implied contract between the parties. *Monongahela River Consol. Coal & Coke Co. v. Hardshaw*, (Ind. App.), 79